THE BICYCLE AND THE COMMON CARRIER.

BICYCLING has introduced into the law of common carriers a question of curious interest, and if it has not made new law it has at least furnished another interesting example of what has long been the chief boast and glory of our common law, — the flexibility of its precedents and the adaptability of its general principles to new facts and changed conditions. The particular point to which now we call attention is whether or not a common carrier, irrespective of statute, is bound to carry a passenger's bicycle as his baggage, and therefore without extra compensation. Most railroads have arbitrarily refused to do so, and have demanded small sums for their transportation; and passengers have submitted to this trifling extortion rather than be bothered with a vexatious lawsuit over pennies. Therefore, in considering this question we are, with a single exception, without direct precedent, and may look at it as an original question.

This exception is a rather unsatisfactory decision given in May of the last year by the St. Louis Court of Appeals,[1] to the effect that under a statute which provided that the charges of the carrier for transportation of a traveller should include the carriage of one hundred pounds of "ordinary baggage," a passenger was not entitled to have his bicycle (which weighed only thirty pounds) carried, and in spite of this statute the carrier was justified in "fixing a special charge for the transportation over its railroad of 'bicycles, tricycles, and baby carriages,' and excluding all these from the category of ordinary baggage."

The opinion of the court is not altogether convincing and free from doubt. They accept the general definition of Lord Chief Justice Cockburn in Macrow *v.* Great Western Railway,[2] "Whatever the passenger takes with him for his personal use or convenience, according to the habits of the particular class to which he belongs, either with reference to the immediate necessities or the ultimate

[1] Missouri *v.* Mo. Pacific Ry. Co., 71 Mo. App. 385. See also 31 American Law Review, 463.

[2] L. R. 6 Q. B. 612.

purpose of the journey, must be considered as personal luggage." They then at some length show that the term "bicycle" is treated "as convertible by the lexicographers, and is (are) defined as 'a light vehicle or carriage,'" and "so in cases involving the use of streets, the payment of tolls, and liability for negligence, bicycles are uniformly held to be vehicles or carriages." The reasoning is hardly conclusive, for while for certain purposes a bicycle may be classed as a vehicle, yet for other distinct purposes it may belong to another general class. The court are like the old woman who remonstrated with the railroad guard about the tariff to be paid on her domestic menagerie with which she travelled, when the only rule of the railroad was that a shilling should be charged for the transportation of dogs, and the guard explained, "You see, mum, cats is dogs, and parrots is dogs, but a tortoise is a h'insect."

The court add that mere utility or convenience at the end of the journey is not sufficient to induce them to call bicycles baggage, and that "our opinion is that, from their nature, structure, and classification, bicycles belong to those things which are properly the subjects of freight contracts, and not embraced in the class of things denoted by the words 'personal or ordinary baggage.'" They then support their conclusion with the observation that "they have been in much use both here and in England for some years. We have been wholly unable to find any precedent for a different conclusion. As a matter of general learning we do know that bills have been introduced into the legislative bodies of the different States to make it the duty of carriers to transport them as ordinary or personal baggage. This demonstrates that, in the judgment of the profession at large, they have no right to be so considered, in the absence of express statutes." But may not these statutes be merely declaratory of a principle of common law which would be clear only after an express decision of a law court, and as no person has sufficient interest at stake to resort to the court for their decision, may not the legislatures have taken upon themselves the duty of settling the rights of the travelling public?

An English decision of a lower court has taken this same view. It is true that this decision is of no great weight, but it is interesting as illustrating the general tendency.[1]

Just what is to be included within the term "baggage" has never been considered capable of strict judicial definition. The term has

[1] The Law Journal, London, Oct. 9, 1897, page 484.

varied and grown with the advance in our travelling facilities. Story's definition of "baggage" of over sixty years ago[1] as, "such articles of necessity or personal convenience as are usually carried by passengers for their personal use, and not merchandise or other valuables, although carried in trunks of passengers, which are not designed for any such use, but for other purposes, such as sale and the like," has expanded to-day into the elaborate definition of Professor Lawson:[2] "The term 'baggage' means such goods and chattels as the convenience or comfort, the taste, the pleasure, or the protection of passengers generally make it fit and proper for the passenger in question to take with him for his personal use, according to the habits or wants of the class to which he belongs, either with reference to the period of transit or the ultimate purpose of the journey."

Thus the decisions and text-books give us but one definite limitation to the term "baggage," and that is that it must be something for the personal use of the traveller. This of course immediately shuts out a large number of cases dealing with samples of goods of commercial travellers;[3] but within the otherwise wide and vague limits of such a definition there is still room for great differences of opinion and most conflicting decisions. In the words of Chief Justice Earle,[4] "It is impossible to draw any well defined line as to what is and what is not necessary or ordinary luggage for a traveller; that which one traveller would consider indispensable would be deemed superfluous and unnecessary by another. . . ."

A closer examination of authorities, however, I think will disclose that there are two classes of considerations which arise and determine this question in every case. The first group of considerations relates to the journey, the second to the traveller's *personnel.* Under the first head we must consider the nature of the carrier and the nature and extent of the journey. As the transportation facilities have developed, the demands of the passengers have grown correspondingly. We ask from the modern carrier that has at its command steam engines, palace cars, or fast ocean steamers, conveniences and comforts that would have been ridiculous to think of in the days of coaches and sailing vessels. With each improve-

[1] 1 Story, Bailments, § 499.

[2] Lawson, Bailments, § 272.

[3] See Hutchinson, Carriers (2d ed.), page 822, note 1, and Lawson, Bailments, page 394, note 4, for a collection of authorities.

[4] Phelps *v.* Northwestern Ry. Co., 19 C. B. N. S. 321.

ment our rights to carry baggage have expanded, and the baggage cars of to-day offer a service that would have been impossible seventy-five years ago. It is always important to bear this in mind in considering the older authorities when these questions are to-day before our courts. No less important than the nature of the carrier is the nature and extent of the journey itself. It is of course only too evident that what may be necessary for a trip on land is totally unfit for a voyage at sea,[1] and a long journey demands preparations and provisions that would be absurd for a short one. Thus not only does the kind of necessaries which each passenger may carry with him as baggage vary with the details of each journey but also the quantity.[1] What is necessarily a part of each traveller's *impedimenta* must therefore be considered each time a question is raised thereon in the light of all these attending circumstances. This can be illustrated in no way better than in that class of cases where the traveller seeks to recover for money which he packed with his baggage, and for the loss of which he now seeks to hold the carrier liable. In Illinois $300[2] and in New York $285[3] and $800[4] were under proper conditions considered part of the traveller's baggage, while in another case $439[5] was held so large a sum that the traveller would be unreasonable in having it in his trunk, and it could not be considered as baggage; while the Massachusetts court was in doubt about the sum of $325, and sent the case back for a new trial for further evidence.[6]

In the second group of considerations we must examine the *personnel* of the traveller. It is only too obvious that what is necessary for a woman has no place in the baggage of a man.[7] So, too, "the station in life" of the traveller is a most essential consideration to determine what may be necessary for his "conven-

[1] Cadwallader *v.* Grand Trunk Ry. Co., 9 Low. Can. 169; Wood *v.* Devin, 13 Ill. 746; Davis *v.* Mich. S. & N. I. R. R. Co., 22 Ill. 278; Dexter *v.* Syracuse, B. & N. R. R. Co., 42 N. Y. 326; Duffy *v.* Thompson, 4 E. D. Smith (N. Y.), 178; Ouimit *v.* Henshaw, 35 Vt. 605; Michigan S. & N. I. R. R. Co. *v.* Oehm, 56 Ill. 293; Parmelee *v.* Fischer, 22 Ill. 212; Grant *v.* Goodwin, 1 E. D. Smith (N. Y.), 95.

[2] Illinois C. R. R. Co. *v.* Copeland, 24 Ill. 332.

[3] Weed *v.* Saratoga & S. R. R. Co., 19 Wend. (N. Y.) 534.

[4] Merrill *v.* Grinnell, 30 N. Y. 594. See also Grant *v.* Newton, 1 E. D. Smith (N. Y.), 95; Cole *v.* Goodwin, 19 Wend. (N. Y.) 251; Duffy *v.* Thompson, 4 E. D. Smith (N. Y.), 178; Bowman *v.* Maxwell, 9 Hump. (Tenn.) 624; Johnson *v.* Stone, 11 Hump. (Tenn.) 419.

[5] Davis *v.* Mich. S., etc. R. R. Co., 22 Ill. 278, 74 Am. Dec. 151.

[6] Jordan *v.* Fall River R. R. Co., 5 Cush. 69. See also Torpey *v.* Williams, 3 Daly (N. Y.), 162; Doyle *v.* Kiser, 6 Ind. 242.

[7] Chicago, R. I. & Pac. R. R. Co. *v.* Boyce, 73 Ill. 510.

ience, comfort, taste, pleasure, and protection" during his journey. Having this in mind, $1,400 worth of jewelry has been held properly part of the baggage of a person of wealth,[1] while the Supreme Court of the United States has said that two hundred and seventy-five yards of lace worth $10,000 is essential to the convenience and comfort of a Russian lady of fortune, when a traveller in America, as part of her baggage.[2] Likewise feather-beds, pillows, towels, blankets, table-covers, etc., repeatedly have been held properly to be part of the baggage of an emigrant.[3]

As it is quite as necessary for the traveller to provide for his needs at the end of his journey as well as for those while he is actually travelling, the principle has generally been recognized that a traveller is entitled to have carried with him whatever is essential to the ultimate purposes of his journey. That is, in this second group it is always imperative to consider what is this "ultimate purpose of the journey" in order to arrive at a full understanding of what is, under all the circumstances of the case, baggage. The traveller must not only reach his destination in comfort, but he must reach it with such materials and implements that he will be enabled to perform the functions or do the work for the performing of which at a particular place he has taken his journey. As it is somewhere tersely put, "the traveller is entitled to carry with him as baggage the peculiar implements of his profession, the taking of which has arisen from the fact of his journey." The courts have repeatedly emphasized this principle. In the United States Supreme Court we have a decision that the surgeon travelling to his patient is entitled to have his surgical instruments carried as baggage.[4] And again, for the mechanic going to work, the carrier must transport his tools;[5] for the student, his books;[6] for the pleasure-seeker, his opera-glasses;[7] for the barrister, his wig and gown, and possibly his reports;[8] and for the sportsman, his gun.[9]

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[1] Coward *v.* E. Tenn. V. & G. R. R. Co., 16 Lea (Tenn.), 225.

[2] New York, etc. R. R. Co. *v.* Fraloff, 100 U. S. 24.

[3] Parmelee *v.* Fischer, 22 Ill. 212; Ouimit *v.* Henshaw, 35 Vt. 605. But see Macrow *v.* Great Western Ry. Co., L R. 6 Q. B. 612.

[4] Hannibal Railroad *v.* Swift, 12 Wall. 262.

[5] Kansas City, etc. R. R. Co. *v.* Morrison, 34 Kan. 502; Porter *v.* Hildebrand, 14 Pa. St. 129, and 2 Harris (Pa.), 129; Davis *v.* Cayuga & S. R. R. Co., 10 How. Pr. (N. Y.) 330.

[6] Hopkins *v.* Westcott, 6 Blatch. 64.

[7] Toledo, W. & W. Ry. Co. *v.* Hammond, 33 Ind. 379.

[8] Munster *v.* South Eastern Ry. Co., 4 C. B. N. S. 676.

[9] Van Horn *v.* Kermit, 4 E. D. Smith (N. Y.), 454.

There is, naturally, a limit in reason as to what carriers are thus bound to transport for such travellers as baggage. Of course it is true, as the St. Louis Appellate Court suggests, that "mere utility or convenience at the end of the journey is not sufficient." The articles must be connected with the purpose of the journey. Then, too, carriers are obliged to carry only such articles as are generally used by persons of this class of travellers, and only in such quantities as are reasonable. Thus a father of a family may not insist on the carriers transporting for him a seventy-eight pound spring horse, forty-four inches in length, which he was taking home with him;[1] nor may a musician insist on carrying a pianoforte or an organ, nor a student a whole library, nor a mechanic the tools and machinery of a machine-shop[2] nor an actor the paraphernalia of a theatre.[3]

Considering, then, the status of the bicyclist in the light of all these decisions, let us see how the case stands. It must be borne in mind that the bicyclist patronizes almost exclusively the "local trains, or, at most, "local expresses." These trains, although they almost always have a baggage car attached, usually handle very little baggage, so that on a summer's day as the bicyclists stream out from, or back to, town they will be the only ones who will take advantage of the baggage car. It should also be remembered that it is generally on a Sunday or holiday that bicyclists make use of trains, and it is on just such days that the least demand is made upon their baggage facilities by the travelling public at large.

Looking at the question from these two points of view, we find that we have, first, the local carrier, a short journey, and a slow-moving train. In this combination we have the train, already including a suitable baggage car which would otherwise be but little patronized, moving at such a rate and for such a distance that no special attention need be paid to the packing of bicycles in the car. But even if this were not so, would it be asking too much of our modern railway carriers to supply a special car for the transportation of bicycles when we consider how many extra dollars they put into the railroad companies' pockets? Look any holiday at the crowds who flock to the railway stations with their bicycles to be transported beyond the city limits so as to enjoy a day of country

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[1] Hudston *v.* Midland Ry. Co., L. R. 4 Q. B. 366.
[2] Merrill *v.* Grinnell, 30 N. Y. 594, 619.
[3] Oakes *v.* N. Pac. R. R. Co., 20 Oregon, 392.

riding, or returning weary from a ride into the country, are carried back to town; and then calculate how many extra passengers the bicycle makes for the railroad.

Secondly, if the surgeon is entitled to have his surgical instruments carried, and the mechanic his tools, the student his books, and the sportsman his gun, why may not the bicyclist have his bicycle transported with him? It is difficult to see why not. The instruments of the surgeon, the tools of the mechanic, the books of the student, or the gun of the sportsman are each respectively no more intimately connected with the purpose of the journey of the traveller than is the bicycle with the purpose of the bicyclist's journey. The bicycle has, perhaps, in point of time, a closer connection, for the surgeon, the mechanic, the student, or the sportsman may reach his destination in advance of his baggage without perhaps serious inconvenience; but if on reaching his destination the bicyclist is not able immediately to get his bicycle and ride on, the very purpose of the journey is defeated.

The only arguments that can be made in favor of the carrier are: first, that the bicycle is inconvenient to carry on account of its size and shape; and, second, that it is not customarily carried as baggage. To the first we answer that bicycles are very generally and usually carried when an extra tariff is paid, and although charging a few extra pennies for transportation does not alter the size and shape of the bicycle, yet it silences complaints, and we hear nothing further of inconvenience. We do not admit the second, for to-day it hardly yet can be said to be a general custom. There is danger, however, in the continued submission of the bicyclist to the extortionate demands of the carrier that the arbitrary practice will ripen into a universal custom, and then at last stiffen into a rigid rule of law, to deprive a bicyclist of his right to have his bicycle transported with him as his personal baggage without the court ever sufficiently considering the subject. It may be that when this question is presented again the court may reach the same conclusion as the Missouri court. Perhaps, however, some court may be influenced to interpret the definition of "baggage" in a way commensurate with the development of the steam and electric carriers of to-day, still having in mind the much quoted words of Lord Chief Justice Cockburn,[1] "Whatever disadvantages attach to a system of unwritten law, and of these we are

[1] Wason *v.* Walter, L. R. 4 Q. B. 73, 93.

fully sensible, it has at least this advantage, that its elasticity enables those who administer it to adapt it to the varying conditions of society, and to the requirements and habits of the age in which we live, so as to avoid the inconsistencies and injustice which arise when the law is no longer in harmony with the wants and usages and interests of the generation to which it is immediately applied."

Lee Max Friedman.

53 STATE STREET, BOSTON.